



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary

State Water Project Contract Extension Project

January 29, 2014 10:00 AM – 4:00 PM

Draft Meeting Attendance List

<p><u>California Department of Water Resources Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Carl Torgersen, California Department of Water Resources • Ralph Torres, California Department of Water Resources 	<ul style="list-style-type: none"> • Jeff Davis, San Geronio Pass Water Agency • Ray Stokes, Santa Barbara County/ Central Coast Water Authority • Dana Jacobson, Santa Clara Valley Water District • David Okita, Solano County Water Agency • Steve Wickstrum (by phone), Ventura County Flood Control District
<p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Dan Flory, Antelope Valley – East Kern Water Agency • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin (by phone), Butte County • Tom Glover, Dudley Ridge Water District • Valerie Pryor (by phone), Castaic Lake Water Agency • Robert Cheng (by phone), Coachella Valley Water District • Mark Krause (by phone), Desert Water Agency • Curtis Creel, Kern County Water Agency • Deven Upadhyay, MWD of Southern California • Kathy Cortner, Mojave Water District • Jon Pernula (by phone), Palmdale Water District • Bob Perreault, Plumas County Flood Control & Water Conservation District 	<p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich (by phone), California Department of Water Resources • Spencer Kenner, California Department of Water Resources • Kathie Kishaba, California Department of Water Resources • Philip LeCocq, California Department of Water Resources • Jeremiah McNeil, California Department of Water Resources • Rusty Mills (by phone), California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources

<ul style="list-style-type: none"> • Douglas Headrick (by phone), San Bernardino Valley Municipal Water District • David Sandino, California Department of Water Resources • Dena Uding, California Department of Water Resources • Pedro Villalobos, California Department of Water Resources • Lisa Toms, California Department of Water Resources <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Stan Dirks, Orrick, Herrington & Sutcliffe, LLP • Erick Cooke (by phone), Environmental Science Associates • Cathy McEfee (by phone), Environmental Science Associates • Barbara McDonnell (by phone), MWH Global • Doug Montague, Montague, DeRose and Associates <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> • Bruce Alpert (by phone), Butte County • Dan Masnada (by phone), Castaic Lake Water Agency • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Milli Chennell, Kern County Water Agency • Don Marquez, Kern County Water Agency • Amelia Minaberrigarai (by phone), Kern County Water Agency • Jaime Dalida, MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California 	<ul style="list-style-type: none"> • John Schlotterbeck (by phone), MWD of Southern California • Leah Wills (by phone), Plumas County Flood Control and Water Conservation District • Len Fleckenstein (by phone), Santa Barbara County Water Agency • Randy Turner (by phone), Santa Barbara County Water Agency • Theresa Lightle, State Water Contractors, Inc. • Stefanie Morris (by phone), State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc. • Linda Standlee, State Water Contractors, Inc. • Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District • Lisa Kern (by phone), Ventura County Flood Control District <p><u>Public</u></p> <ul style="list-style-type: none"> • Debbie Espe, San Diego County Water Authority, • Dan McDaniel (by phone), Central Delta Water Agency • Thomas Rinn (by phone), Waterworks Consulting • Patricia Schifferle (by phone), Planning and Conservation League <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> • Alex Braunstein, Kearns & West • Mike Harty, Kearns & West • Kelsey Rugani, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West welcomed everyone to the 19th negotiation session. She reviewed the ground rules the action list and asked if there are additional edits to the January 22nd negotiation session meeting summary. Hearing no objections, the meeting summary was approved and posted to the website.

III. Objectives Discussion

David Okita, Solano County Water Agency, walked through the Contractors 9th Offer in response to DWR's edits to the Contractors' 8th offer. He suggested that on Objective 1: Term, A.1. it would be helpful to hear from DWR on why a shorter Contract Term is appropriate. Steve Cohen, DWR, responded that the proposed contract amendment changes would begin in 2015 or 2016, which is effectively 60 years, at a minimum, or 40 years from 2035. He said that the current contract is for 75 years and significant changes are being made through this process in year 50. Steve said that the Department believes that conditions could likely change and it makes sense to have the contract structured so these issues are revisited in the proposed timeframe the Department offered.

David Okita then suggested that on the proposed language throughout the offer that is either chargeable or reimbursable that an appropriate next step is to have the DWR-Contractor attorney group review this and make a recommendation. He added that the attorney group should also review the 3D Billing Authorization language that includes Davis-Dolwig language, as well as Objective 1, item 2, where the Department has added language on interpretation and implementation of the Contract Extension Amendment.

David Okita then further addressed the Contractors' review of the Department's latest offer on Objective 2A: Reserves, A. General Operating Account (GOA), 9 GOA reporting requirements. David suggested that the Contractors believe that reporting should occur monthly, although he suggested that if no activity occurred it could simply be communicated via email to the SWRDS Finance Committee. Carl Torgersen, DWR, responded that it depended on what details are included in GOA reports. He said that depending on how the reports are defined, it could be very difficult. Carl suggested that DWR would like some flexibility in the reporting period, though the Department will discuss the suggestion of monthly reports in caucus.

Carl also asked about what reporting is needed and if it is to determine whether funds are used or not. Ray Stokes, Santa Barbara County/Central Coast Water Authority, suggested that reporting use of the GOA would serve as an early signal to the Contractors there are potential cash flow issues. He suggested that after a report is sent to the Contractors, then, if appropriate, the Finance Committee could discuss the issue.

Perla Netto-Brown, DWR responded that using the GOA to cover cash flow peaks and valleys does not necessary mean that something has gone wrong. Ray Stokes asked whether other cash in the Systems Revenue Account would be drawn down before accessing the GOA. He stated that the Contractors' concern is that both the Systems Revenue Account and the GOA would be drawn down. Carl Torgersen reiterated that the issue is frequency of GOA reporting, and that the next step is for DWR to review this item in their caucus.

David then continued to review the Contractors responses to the Department's latest offer. Anna asked and David confirmed that all edits in Objective 2B: Accounts, B. SSA are acceptable to the Contractors.

On Objective 2C: Flow of Funds, David Okita stated that SWP Contractors would agree on the flow of funds proposal, including the 51(e) subaccount assuming that their needs are met on reporting. David clarified that if the reporting needs are met then the other edits in 2C: Flow of Funds are acceptable to the Contractors, as well as the edits in 2D Financial Management.

On 2E: Supplemental Billing, SWP Contractors have stated the concern that the Department would supplemental bill the Contractors before exhausting other funds. SWP Contractors proposed that if the Department projects a cash flow shortfall of all systems cash balances, DWR will notify the SWRDS Finance Committee with 120 days before running out of money. The Finance Committee would then be able to meet, and then subsequently 90 days before running out of money, the supplemental bill could be sent. Ray Stokes raised the issue that all systems cash balances needed to be clarified pointing out that the offer language on the "unencumbered" balance needs to be clarified.

David Okita stated that on 2F: 51(e) revenue limitations, SWP Contractors are concerned that 51(e) revenues would be used for reimbursable costs in a manner that would benefit the Contractors unequally. SWP Contractors ask for approval of 51(e) uses for reimbursable costs that are not billed to all the Contractors and that do not equally benefit all contractors. Carl Torgersen stated that he hasn't had a chance to discuss this with the Director, though he was fairly certain that this proposal is a non-starter for the Department.

David Okita then explained that the Contractors did not have time to review the Department's proposed edits on the Principles document on 2G, Reporting Requirements. He suggested that the Contractors will review this in their next caucus.

Deven Upadhyay, Metropolitan Water District of Southern California, stated that he wanted to understand DWR's concerns on 3D: Billing Authorization Davis-Dolwig language in the contract. He asked why the Department is hesitant to include the language in contract amendments. Deven suggested that if the Department believes that possible future legislation could change this Contract language then why would the Department have an issue including the language here? Steve Cohen responded that DWR is concerned with putting in portions of the law in the contract and not including other portions. Steve suggested that this needs to be further explored with the legal group.

On Objective 4: Bay Delta Conservation Plan (BDCP), David Okita said that the objective is to address cost allocation for the BDCP and Delta Habitat Conservation and Conveyance Plan (DHCCP). David further explained that Butte and Plumas want to make sure that this issue is addressed in the Contract Extension process. David said that the Contractors caucus is working on this topic and will propose language or suggested next steps.

Steve Cohen stated that a possible fourth topic to be reviewed by the legal group is related to a concern in Objective 3A: Simplification of Billing, B. 3 on capital costs that are not debt financed. Steve explained that 1hh, for example, which is being expanded by the Contract Amendment, could lead to having capital projects that are not debt financed. Perla Netto-Brown shared two

examples of projects that were not debt financed. One is the refurbishment at Thermalito, which was initially charged to the Replacement Accounting System (RAS), but then it was beyond the bonding period so the Department used a pay-as-you-go approach. She suggested that the second example is paying for SAP.

Curtis Creel, Kern County Water Agency, suggested that the contract makes clear what is a capital charge and a minimum charge, which is different from something that might be capitalized, such as SAP. Curtis added that the Contractors would discuss this in caucus. Deven Upadhyay asked whether the SRA could be used to finance the kinds of challenges that Perla mentioned. Perla Netto-Brown suggested that it could possibly be used assuming the SRA had the funds. Steve Cohen reiterated that the concern is whether DWR could charge the Contractors. SWP Contractors said that they would review the issue in caucus and report back.

Ray Stokes presented the Contractor's document on 2H: 51(e) Reporting Requirements. Ray stated that the context for the discussion is to make sure there is clear delineation between revenues in the 51(e) subaccount versus cash balances for operating costs for a given year. Carl Torgersen asked if the intent is to have the reporting requirements be in the contract. Curtis Creel and Deven Upadhyay responded yes, that was the intent. Curtis explained that the Contractors are envisioning 100 percent of the language on accounting and reporting on all 51(e) revenues is in the contract. Perla Netto-Brown shared that she thought these requirements did not encompass all fourth priority funds, but any remaining 51(e) revenues in the subaccount. Ray responded that current 51(e) revenues are calculated on a total basis, and that the Contractors want reports on all 51(e) revenues. Perla asked if the current level of reporting on rate management is sufficient. Ray said yes, however, the Contractors are also asking for additional reporting on 51(e) revenues. Ray suggested that DWR would still calculate available 51(e) revenues on an annual basis. Additionally there are five to six accounts, which DWR would report on how revenues are allocated across accounts, including GOA, SWRDS Support Account (SSA), SWRDS Reinvestment Account (SRA), 51(e) subaccount, Capital Facilities Account, first priority Burns Porter, and Davis-Dolwig. Perla asked if the current reporting on the Capital Facilities Account would be adequate. Ray responded that he wasn't sure because he hadn't seen a Capital Facilities Account report in a while. Ray stated that he thought that SAP has the capability to produce a report for the 51(e) subaccount. Perla said that it's difficult to predict whether the available reports will be adequate for the Contractor requirements. She also stated that based on previous experiences of developing reports, it takes time to determine the reporting requirements and set up the systems to provide the requested reports.

Curtis Creel suggested that maybe DWR and the Contractors should go back to the three accounts, where reporting would be simplified. Perla Netto-Brown said that she didn't agree that going to three accounts would be simpler; the reporting challenges would be the same. Curtis said that the current proposal, which includes the 51(e) subaccount, is contingent on having the right reporting mechanisms setup. He suggested that DWR should come back with a proposal on reporting.

Carl Torgersen asked for clarification on the risk the Contractors are trying to address. Ray explained that the contractors want a report that shows the starting balance, the itemized expenditures and the ending balance. There also was a discussion about what the SAP system provides and Utility Cost and Billing System (UCABS). Kathy Cortner, Mojave Water Agency, stated that the chances for errors with a subaccount were higher if it's based on excel

spreadsheets rather than the entries in SAP. Perla said that she didn't agree. Ray stated that sufficient reporting is a fundamental concept to the current proposal on accounts including the 51(e) subaccount.

Mike Harty, Kearns & West, suggested that there appears to be agreement on some components of reporting and areas where the current level of reporting is sufficient. Perla suggested that the disagreement appears to be whether more reporting is needed on all 51(e) revenues or on the residual 51(e) revenues in the subaccount.

DWR and SWP Contractors took a break for lunch and to caucus.

IV. Objectives Discussion Continued

On 51(e) reporting, Ray Stokes presented a visual on the white board to describe what the Contractors are seeking on reporting. He explained that current DWR reports include a report of all of the capital revenues. Then taking out the capital expenditures, the Department provides what could be called "gross 51(e) revenues." Ray continued that under the Monterey Amendment, Davis-Dolwig expenditures are subtracted as well as Capital Facilities Account expenditures. Subsequently, the Department pays rate management credits, and then there are remaining "Other System Purposes" funds. He said that, under the current proposal, under "Other System Purposes," the Director has the discretion to allocate funds to the GOA, SSA, SRA, and the 51(e) subaccount. Anna West asked the Department if this diagram accurately captures what the Department does now on rate management and envisions in the current proposal on the accounts. Perla affirmed that this outline aligns with the Department's understanding. Ray then asked Perla Netto-Brown to clarify whether the "residual 51(e) revenues" she referenced in the morning session includes all funds for "Other System Purposes, or just the funds in the 51(e) subaccount. Perla explained that she was referring to the subaccount on 51(e) revenues; however the Department is OK with, and expecting to provide reports on, the different accounts in Other Systems Purposes (GOA, SSA, SRA, 51(e) subaccount). Perla asked to clarify if the Contractors wanted reporting on anything above Other System Purposes. Ray suggested that the Contractors already get the information above Other System Purposes; however, the Contractors will want additional information on Davis-Dolwig reporting. Perla stated that the Department currently reports on Davis Dolwig funds on a summarized level.

Deven suggested that a high level report may be acceptable, but there may be times when they would want additional detail covering individual projects expended. He clarified that the Contractors are interested in showing and documenting that Contractors' funds are not being used to pay for these recreation costs.

Ray Stokes and Perla Netto-Brown discussed the meaning of "appropriate level of detail" with regards to reporting on the 51(e) reporting subaccount. Ray emphasized the need for a delineation of available systems revenue separate from cash for operations.

Carl Torgersen stated that the Department has no problem with the diagram. He reiterated that the Director has been very clear that he will want clear reports and transparency; and the Department has already committed to share these reports with the SWRDS Finance Committee. Carl also suggested that there are going to be costs associated with developing some of the reports and suggested that this is a perfect example of the kind of thing the SWRDS Finance Committee would review. Carl stated that, at a policy level, DWR does not have a problem with

the Contractors' proposal on reporting; however, technical details would need to be worked out. He added that memorializing that level of detail in the contract could be problematic for the Department. Curtis Creel stated that in the case that the reports needed are not possible, the Contractors' solution is to have three accounts rather than four accounts. Carl said that he disagreed, recalling that the Department had proposed a solution to address these concerns by not touching a percentage of Systems Revenue, with the technical details of reporting to be worked out through the Finance Committee.

David Okita noted that there is a general consensus between DWR and SWP Contractors on the importance of reporting which represents a lot of progress. Curtis Creel agreed that the commitment to reporting at a high-level is important, and that the technical details could be worked out. Carl acknowledged the concern about level of detail in the reports, and said that the Director had the same interest in understanding how the different funds operate. Deven Upadhyay stated that the general picture provided by summary details would probably be sufficient in many cases; however, in the case of a challenge or imbalance the Contractors would want access to additional levels of detail on Davis-Dolwig. He stated that summary detail would be fine some of the time; however, there are cases where Contractors would want access to the whole picture.

Carl Torgersen stated that he thought DWR and the Contractors could agree on high-level language on reporting and then have the SWRDS Finance Committee address the specifics. Deven Upadhyay responded that Contractors want assurance for reporting of a certain nature, more than just a general commitment to reporting.

The group decided that an appropriate next step was to have a technical team meet to review current examples of reports that the Department can generate to understand the level of detail that can be provided. Anna West and Mike Harty suggested that revised draft language on 2H 51(e) reporting be drafted by the Contractors before the technical team meeting to provide direction and make sure that needs of the Contractors are clear and therefore can be addressed.

Carl Torgersen stated that he wanted to explore ways to make a general binding commitment to reporting in the contract, and then explore how more details on reporting could possibly exist as an attachment to the Charter. David Okita suggested that the topic of what language goes where could be folded into other legal group discussions on the SWRDS Finance Committee charter.

On Objective 2A: Reserves, A, 9, GOA Reporting Frequency, Carl Torgersen said that the Department might be alright with monthly reporting, however, he suggested that the SWRDS Finance Committee could review and adjust the frequency.

Carl then addressed the language on the 120/90 day concept in supplemental billing. Steve Cohen suggested "below a reasonable minimum." Stan Dirks, Orrick, Herrington & Sutcliffe, LLP, provided some additional explanation. The group considered additional language on "projected to be 90 days of expenditures or less." Doug Montague, Montague, DeRose and Associates, raised that this is potentially a credit issue for the Department. Anna noted the ground rules that only lead negotiators are to speak. Ray Stokes asked whether bond counsel from the water contractors should provide input on this issue. Carl Torgersen suggested that DWR take a caucus.

DWR took a short caucus.

Carl Torgersen stated that DWR agrees with the 120 days, and working with the Committee. He suggested edits to convey that supplemental billing may only be used when available System cash balances are projected to be “less than an amount equal to 90 days operating expenditures.” David Okita said that this language is similar to previous proposals. The Contractors and the Department agreed to accept these edits on supplemental billing.

On 3D: Billing Authorization Steve Cohen suggested that the attorney group needs to review this item, because it’s a legal issue. Curtis Creel stated that he thought a policy-level discussion is appropriate. Carl Torgersen said that he thought the attorneys needed to review for relevance to the contract amendment. Carl said that legislative action could trump the language in the Contract. Deven then asked if the Department believes that the Legislature could trump this language in the contract through future legislation then why wouldn’t the Department be willing to include the language in the contracts? Carl Torgersen explained that the Department will need to go to the Legislature to review the contract amendment, including this provision. Carl explained that the Department already follows this practice, because it’s State law. Carl suggested that the proposed language is redundant. Steve Cohen stated that he thought attorney review of this item would be productive.

On Objective 2G: Reporting Requirements, David Okita shared that based on the Contractors review of the Department’s offer on this document there appears to be alignment on the principles, though there is some disagreement on aspects of the preamble. David reviewed the Contractors revised version of the reporting principles document with the Contractors’ edits to the preamble. He suggested that from the standpoint of the Contractors, the principles on reporting are foundational, and the Contractors have tried to reflect that in edits the preamble.

DWR and SWP Contractors took a caucus.

Carl Torgersen stated that on 9. GOA reporting, DWR is okay with monthly reporting with periodic review from the SWRDS Finance Committee which could make a recommendation to the Director on reporting frequency. He suggested direct edits on this item (below).

9. GOA Reporting - DWR will prepare monthly reports on the balance and use of the GOA for the Director, which will be provided to the SWRDS Finance Committee. The SWRDS Finance Committee will periodically review reporting frequency and make recommendations to the Director regarding reporting frequency.

The Contractors agreed to this language.

Carl then shared that on Objective 2G: Reporting Requirements, DWR proposes to add the language that “Regardless of the exact reports used, the principles and guidelines for financial reporting shall include, as appropriate.” (followed by the Principles) David Okita suggested that the Contractors need to discuss this in a caucus.

On Objective 3A: Simplification of Billing B.3, David Okita suggested that the Contractors propose that DWR could use the SRA to cover capital costs not being financed through debt service (Objective 3A, Simplification of Billing, B.3). Steve Cohen suggested that Objective 2B, Accounts, A. Item 5A on SRA investments would cover this. Through further discussion, the group made edits to 3A: Simplification of Billing, B.2, C.2, and C.3. The group agreed to the edits.

SWP Contractors took a caucus.

David Okita said that the Contractors propose that language in Objective 2G: Reporting requirements reads “to the extent technically feasible” in place of “as appropriate.” Carl Torgersen suggested that the Department could agree to the edits.

I. Next Steps

DWR and the SWP Contractors discussed the Contract Extension schedule and agreed the next meeting would be on Wednesday, February 12th. The group also agreed to schedule a technical team meeting for Tuesday, February 4th, and the legal group will also meet in advance of the next negotiation meeting. Anna explained that Kearns & West will review and clean up the final documents agreed to at the end of today’s meeting so we have the latest versions to work with. These will also be posted on the website.

II. Public Comment

There were no public comments.

III. Adjourn

The meeting was adjourned.

Action Items		Responsibility Due Date
1.	Post final January 22, 2014 negotiation session meeting summary.	K&W ASAP
2.	Draft January 29, 2014 negotiation session meeting summary.	K&W ASAP
3.	SWP Contractors to draft document on 51(e) reporting principles.	SWP Contractors ASAP
4.	DWR and SWP Contractors to convene a technical group meeting to discuss 51(e) subaccount reporting.	DWR and SWP Contractors ASAP
5.	DWR and SWP Contractors to convene a legal group meeting.	DWR and SWP Contractors ASAP
6.	SWP Contractors to convene to discuss Objective 4.	SWP Contractors ASAP